

Order

Michigan Supreme Court
Lansing, Michigan

March 18, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-16

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rules 6.302 and 6.310 of
the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 6.302 and 6.310 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A)-(B) [Unchanged.]

(C) A Voluntary Plea.

- (1) The court shall not participate in discussions between the prosecutor and the defendant's lawyer or the defendant, if the defendant is proceeding pro se, concerning a plea agreement.
- ~~(1)~~(2) The court must ask the prosecutor and the defendant's lawyer or the defendant, if proceeding pro se, whether they have made a plea agreement.
- ~~(2)~~(3) If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant. A plea

agreement may include an agreement on a specific sentence disposition or sentencing range, including an agreement on the applicability of a particular sentencing provision or factor of the sentencing guidelines.

- (3)(4) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence disposition or sentencing range, or a prosecutorial sentence recommendation, the court may
- (a) reject the agreement; or
 - (b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to the sentence agreed to where the agreement is for a specific sentence disposition or sentencing range ~~or recommended by the prosecutor~~; or
 - (c) accept the agreement without having considered the presentence report; or
 - (d) take the plea agreement under advisement.

If the court accepts the agreement ~~without having considered the presentence report~~ or takes the plea agreement under advisement, and the agreement includes a sentence recommendation by the prosecutor, it must explain to the defendant that the court is not bound to follow the prosecutor's sentence ~~disposition or recommendation agreed to by the prosecutor~~, and that if the court chooses not to follow it, the defendant will be allowed to withdraw from the plea agreement.

(4)(5) [Renumbered but otherwise unchanged.]

(D)-(F) [Unchanged.]

Rule 6.310 Withdrawal or Vacation of Plea

- (A) [Unchanged.]
- (B) Withdrawal After Acceptance but Before Sentence. After acceptance but before sentence,
 - (1) [Unchanged.]
 - (2) the defendant is entitled to withdraw the plea if

- (a) ~~the plea involves a prosecutorial sentence recommendation or an agreement for a specific sentence disposition or sentencing range, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea;~~ or
- (b) ~~the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.~~

(C)-(E) [Unchanged.]

Staff Comment: The proposed amendments of MCR 6.302 and MCR 6.310 would make the rules consistent with the federal rules, which preclude judicial involvement in negotiating plea agreements and limit the ability of defendants to withdraw guilty pleas.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-16. Your comments and the comments of others will be posted at the following address:

www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2008

Corbin R. Davis
Clerk